

# INDEX

Original Print

Proceedings in the United States Court of Appeals  
for the District of Columbia Circuit—Continued

Joint appendix consisting of portions of the record  
from the United States District Court—Continued

Interrogatories in attachment and answers with notice to Columbia Federal Building Association.....	6	6
Exhibit—Statement of Columbia Federal Savings & Loan Association for Ethel- bert B. Frey.....	8	8
Interrogatories in attachment and answers with notice to Prudential Building Associa- tion.....	9	9
Interrogatories in attachment and answers with notice to Ethelbert B. Frey, Esq.....	10	10
Motion of Ethelbert B. Frey to quash attach- ment issued by plaintiff.....	11	12
Exhibit A—Annual Report Under Rule 22	12	13
Motion for judgment of condemnation against credits in the hands of Ethelbert B. Frey Committee.....	18	19
Motion for judgment of condemnation against credits in the hands of Prudential Building Association.....	18	20
Motion for judgment of condemnation against credits in the hands of Columbia Federal Savings & Loan Association.....	19	21
Exhibit A—Letter from Laskey & Laskey to the Honorable Luther W. Youngdahl, dated June 7, 1960.....	20	22
Exhibit B—Letter from Columbia Federal Savings and Loan Association to Mr. Dyer J. Taylor, dated May 27, 1960.....	21	23
Exhibit C—Pamphlet from the Columbia Savings and Loan Association.....	23	25
Memorandum opinion, Youngdahl, J.....	25	27
Order.....	29	31
Exhibits filed pursuant to Court Order of September 13, 1960.....	31	33
Savings Account pass book of Columbia Federal Savings and Loan Association....	31	33

NOTICE—February 24, 1960

To Prudential Building Association  
1308 G St., N. W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits [fol. 6] of Harry Clifford Porter, ~~or his Committee, Ethelbert B. Frey, Esq.~~ /s/ JLL in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there by, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal

. . . .

# IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT ~~Notice~~—Filed  
March 1, 1960

*Notice*

To Columbia Federal Building Association  
730 - 11th St., N. W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey  
Attorney for Plaintiff

## INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendants?<sup>1</sup> If so, [fol. 7] how, and in what amount?

ANSWER: Not to defendant individually, but see Interrogatory answers "2nd" and "3rd" below and Thermofax attachments.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant<sup>1</sup> in your possession or charge? If so, what?

ANSWER: Savings Account-Ethelbert B. Frey, Comm. Est. Harry C. Porter, Account No. 31337

3rd. List the dates and amounts of each deposit by the defendant, or his committee, Ethelbert B. Frey, from the date of opening of the account or accounts, and especially the account associated with Book No. 31337. Account opened 5-11-55, amt. \$3,000.00., 1-6-56 and 12-6-56 deposit of \$1,000.00 each—Balance this date, 2-25-60, \$5,791.20 incl. dividends.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 25th day of February, A.D. 1960

Columbia Federal Savings and Loan Association  
/s/ T. W. Blumenaner, Jr., Senior Vice President

---

<sup>1</sup> Or to the defendant's Committee, Ethelbert B. Frey, Esq.

Account No. 31337

NAME Mr. Ethelbert B. Frey Committee for the  
Estate of Harry C. Porter

ADDRESS 1319 F Street, N. W., D. C.

Bonus Long

Bonus Short

Rate

Share Loan Amount

Date Loan Made

Monthly Pmt.

Date Loan Paid

Share Payments		Memo.	Repurchases		Date	Balance	
Div./Memo.	Amount		Div./Memo.	Amount		Div./Memo.	Amount
7.50	3,000.00				May 11'55	7.50	3,000.00
					Jun 30'55	45.11	3,007.50
					Dec 31'55	53.41	3,052.61
17.50	1,000.00				Jan 31'56	70.91	4,052.61
					Jun 30'56	72.15	4,123.52
2.92	1,000.00				Dec 31'56	75.07	5,123.52
	75.07				Dec 31'56	90.97	5,198.59
	90.97				Jun 28'57	92.56	5,289.56
	92.56				Dec 31'57	94.19	5,382.12
	94.19				Jun 30'58	95.83	5,476.31
	95.83				Dec 31'58	48.76	5,572.14
	48.76				Mar 31'59	56.20	5,620.90
	56.20				Jun 30'59	56.77	5,677.10
	56.77				Sep 30'59	57.33	5,733.87
	57.33				Dec 31'59	57.91	5,791.20

SIGNATURE

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION  
Washington, D. C.FREY, Ethelbert B - Committee  
INDIVIDUAL TRUST ACCOUNT - ADULT

Account No. 31337

- (1) Ethelbert B. Frey Committee for Harry C. Porter (Beneficiary)  
 (2) \_\_\_\_\_ (Beneficiary)  
 (To Be Typed)

I am an American citizen and  
 I hereby apply for a SAVINGS account in the

Columbia Federal Savings and Loan Association, Washington, D. C.

A specimen of my signature is shown below and the Association is hereby authorized to act with  
 out further inquiry in accordance with writings bearing such signature.

Signature of Trustee /s/ Ethelbert B. Frey

Street Address 1319 F Street, N. W.

City and State Washington, D. C.

Committee  
As Trustee For Harry C. Porter

Telephone No.

As specified in trust agreement on reverse side hereof.

Dated this 11th day of May 19 55

(over)



[fol. 9]

IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT ~~NOTICE~~—Filed  
March 2, 1960

*Notice*

To Prudential Building Association

1308 G St., N. W., Washington, D. C., Garnishee:

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey  
Attorney for Plaintiff.

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant?<sup>1</sup> If so, how, and in what amount?

ANSWER: Yes, we have a Savings account, No. 18215, in the name of Ethelbert G. Frey, Committee for Harry C. Porter in which the present balance is \$3,078.63.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant<sup>1</sup> in your possession or charge? If so, what?

ANSWER: No, except as reported above.

---

<sup>1</sup> Or to the defendant's Committee, Ethelbert B. Frey, Esq.

3rd. List the dates and amounts of each deposit by the defendant, or his Committee, Ethelbert B. Frey, Esq., from the date of opening of the account or accounts, and especially the account associated with Book No. 18215.

Above Account opened March 3, 1959 with deposit of \$3,000.00. Dividends have been credited periodically and additional deposit of \$2,000.00 was made on January 11, [fol. 10] 1960. One withdrawal was made of \$2,000.00—on October 21, 1959.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

/s/ Richard N. Shanbarker

Signed this 1st day of March A.D. 1960.

/s/ Flora Hock

## IN UNITED STATES DISTRICT COURT

INTERROGATORIES IN ATTACHMENT ~~XXXXXX~~—Filed  
March 2, 1960

To Ethelbert B. Frey, Esq., <sup>notice</sup>Committee of Harry Clifford Porter, 1319 F St., N.W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, *under Penalties of Perjury* within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey  
Attorney for Plaintiff

## INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: I am not personally indebted to the defendant, but as an officer of this Court, hold certain funds as answered in question two.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the [fol. 11] defendant in your possession or charge? If so, what? Where Located?

ANSWER: As committee of the defendant and officer of the Court, I have on deposit in the First National Bank, 1313 G St., N.W., \$2,266.61; a deposit in the Columbia Federal Building Association, 11th. St. N.W. of \$5,791.20, and a deposit in the Prudential Bldg. Association, in the 1300 block of G St., N.W., \$3,078.63, upon which are the following [liens]. One of \$345.00, which is an over-payment of benefits from the Veterans Administration, which they ask to be returned to them, and an attorney's fee of \$2000.00, due attorney for said Harry Clifford Porter.

I understand that under Public Law 86-146 recently enacted, that payments heretofore received by said Harry Clifford Porter, have been stopped, effective as of December 14, 1959, thus the request for the refund. (As per letters received by me from the Veterans Administration and dated February 15, 1960).

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 1st day of March A.D. 1960.

/s/ Ethelbert B. Frey,  
Committee and Attorney

## IN UNITED STATES DISTRICT COURT

MOTION TO QUASH ATTACHMENT ISSUED BY PLAINTIFF  
IN THE ABOVE ENTITLED CAUSE—Filed March 1, 1960

Now comes Ethelbert B. Frey, committee and attorney for the said Harry Clifford Porter, defendant, who is a patient at Saint Elizabeths Hospital, Washington, D. C., and moves this Honorable Court to quash the writ of attachment filed herein on the judgment obtained in the above-entitled cause and issued against him as committee of Harry Clifford Porter for the following reasons:

*First:* That the committee has no control over the funds, whatsoever, as he is only the agent and representative of [fol. 12] this Honorable Court, who has control and custody of the funds of the said Harry Clifford Porter, an ex-service man, to whom money was paid and received by him for his disability connected with his military service, and as such, said funds cannot be attached by the plaintiff or anyone else.

*Second:* That under the Act of Congress in 1935 and set forth clearly in the United States Code, article 38-3101, page 135 and section 454 A, the benefits received by a veteran are unattachable.

WHEREFORE, having fully set forth the facts and laws in the matter, attached hereto and made part hereof, committee and attorney for said patient, Harry Clifford Porter, patient being in Saint Elizabeths Hospital, asks this Honorable Court to quash the attachment filed herein.

And for such other and further relief as to this Honorable Court may seem fit and proper.

/s/ Ethelbert B. Frey,

Committee and Attorney for  
Harry Clifford Porter, patient

• • • •

[Filed March 11, 1960]

**EXHIBIT A TO OPPOSITION OF PLAINTIFF TO MOTION  
TO QUASH ATTACHMENT**

[Filed Feb. 8, 1960]

Ex. A.

Report Under Rule 22

United States District Court for the District of Columbia

In Re: Harry Clifford Porter  
(Patient)

Mental Health No. 1714-52

**ANNUAL REPORT UNDER RULE 22**

(See copy of paragraph (a) of Rule, on back of this form)

The report of Ethelbert B. Frey, Committee, who qualified as committee on the 22nd. day of December, 1952, respectfully shows that the estate consists of the following:

**REAL ESTATE**

Location and Description	Value
None	

[fol. 13]

**BANK DEPOSITS AND OTHER MONEY**

Total, \$.....

Account No.	Amount	Deposited in—	In name of—
Jan. 30, 1960, have on deposit with Col. Federal Bldg. Asso. Book #31337,	\$5,791.20	Columbia Federal Bldg. Association 730 11th. St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit with Prudential Bldg. Asso. Book #18215	\$3,078.63	Prudential Bldg. Asso. 1308 G St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit; First Nat. Bk.	2,041.61	First Nat. Bk. formerly 2nd. 1313 G St., N.W.	Ethelbert B. Frey, Committee
• • • •			

The following is a statement (for the preceding year) of all sales, transfers or other disposition of assets; and of investments and changes in form of assets, and the name in which each stands:

Invested \$3000.00 of patient's money in the Prudential Bldg. and Loan Association, 1338 G St., N.W.;  
Total there now of \$3078.63.

---

---

The penalty of my undertaking is at present \$11,500.00  
The original bond was filed on the 2nd. day of January, 1953, for \$1000.00

The surety is Royal Indemnity Co. and amount of bond at present is %11,500.

When the first undertaking was filed, the value of the estate was \$500.00.

---

---

I/We *Ethelbert B. Frey, Committee*, do swear that I/we have read the foregoing report signed by me/us and know the contents thereof, and that the facts therein stated are true.

/s/ Ethelbert B. Frey, Committee  
Full address: 1319 F Street, N.W.

Subscribed and sworn to before me this 8th day of February, 1960.

HARRY M. HULL, Clerk

By: Robert C. Huey  
Deputy Clerk

• • • •

[fol. 14]

Seventh Account of Ethelbert B. Frey, Committee,  
For period beginning January 30, 1959, and ending  
January 30, 1960

1959	Receipts Disburse- ments
Jan. 30/59 Balance cash on hand in First National Bank formerly 2nd Nat. Bk. at 1313 G St. N.W. Washington, D. C.	\$3261.52
1959 (Deposits since above date)	
Feb. 2, Disability check for patient from United States government	225.00
March 2, Disability check for patient from United States government	225.00
April 1, Disability check for patient from United States government	225.00
May 4, Disability check for patient from United States government	225.00
June 3, Disability check for patient from United States government	225.00
July 8, Disability check for patient from United States government	225.00
August 3, Disability check for patient from United States government	225.00
Sept. 4, Disability check for patient from United States government	225.00
October 5, Disability check for patient from United States government	225.00
Oct. 21, Deposited check heretofore drawn from the account of Prudential Bldg. Asso. for emergency purposes to Drs. Perritti and Teplin, who were psychiatrists in the criminal case #1308-52 & civil action #57-57. These doctors were finally located in California & Wisconsin; but did not use	2000.00
October 29 Received check from Saint Elizabeths after Porter was sent to D.C. jail for trials, there was balance in his account at that time....	187.31
Amounts carried forward	
\$7473.83	

[fol. 15]

		Receipts	Disbursements
Brought forward		\$7473.83	
Nov. 3	Deposited disability check for patient from United States government	225.00	
Dec. 3,	Deposited disability check for patient from United States government	225.00	
1960			
Jan. 4,	Deposited disability check for patient from United States government	225.00	
(1959)	(Disbursements)		
Feb. 19,	Ck. #144, Fred J. Eden, auditor		\$ 40.00
Feb. 19,	Ck. #145, Ethelber B. Frey, committee		73.70
March 2,	Ck. #146, Jones, T.V. repair		27.70
March 3,	Ck. #147, as per order of court, deposited in Prudential Bldg. Asso., 1338 G St. N.W.		\$3000.00
Mar. 11,	Ck. #148, Adkins & Aniley, premium on bond		40.00
Apr. 23,	Ck. #149, National Shirt Shop, for Porter, as per letter		10.22
Apr. 23,	Ck. #150, Ralph S. Anthony Co., as per letter of April 18,		42.50
Apr. 27,	Ck. #151, to superintendent of Saint Elizabeths Hospital		100.00
May 11,	Ck. #152, Further premium on bond		10.00
June 2,	Ck. #153, Electric razor		15.00
June 2,	Ck. #154, For adding machine		60.00
July 23,	Ck. #155, Saint Elizabeths Hospital for necessities,		200.00
Oct. 5,	Ck. #156, Adkins & Aniley, premium from the bond		12.50
Oct. 15,	Ck. #157, E. B. Frey, committee, expenses in pending trials,		50.00
Amounts carried forward		\$8148.83	\$3671.62



[fol. 16]

		Receipts	Disbursements
	Brought forward,	\$8148.83	\$3671.62
Oct. 19,	Ck. #158, For hauling Porter's things from hospital, when sent to District jail,		6.00
Oct. 22,	Ck. #159, Copland, Court Stenographer for record,		5.00
Oct. 28,	Ck. #160, Davis, Court stenographer		8.45
Oct. 28	Ck. #161, E. B. Frey, for expenses as per order of court last year, explained (separate sheet)		100.00
Nov. 4,	Ck. #162, Dr. Pearlman for eye glasses		30.00
Nov. 4,	Ck. #163, Adkins & Anniley for premium, bond.		10.00
Nov. 16,	Ck. #164 Repair Porter's watch		7.00
Nov. 17,	Ck. 165, Bill's T.V. (Repair Porter's T.V.		12.00
Dec. 15,	Ck. #166, O'Neil, court reporter,		27.30
Dec. 16,	Ck. #167, Superintendent Saint Elizabeths Hospital, after his return there,		100.00
Dec. 17,	Ck. #168, National Shirt Shop		19.85
Dec. 18,	Ck. #169, as per letter, Xmas presents, (Champayne and Whiskey)		50.00
Dec. 18,	Ck. #170, Cash for additional expenses, etc. as per order of court, separate sheet in detail,		50.09
1960.			
Jan. 11,	Ck. #171, Return of money heretofore drawn as explained, to Prudential Bldg. & Loan Asso.		\$2000.00
	Total receipts and cash on hand at beginning of year	\$8148.83	\$6107.22
	Amounts carried forward	\$8148.83	\$6107.22

[fol. 17]

	Receipts	Disbursements
Brought forward	\$8148.83	\$6107.22
Disbursements during year,	6107.22	
<b>1960</b>		
Jan. 30, Balance cash on hand in First National Bank formerly 2nd. Nat. Bank, 1313 G St., N.W.	\$2041.61	
Jan. 1959, Cash of monies in bank at beginning of year,	\$3261.52	
Deposits of monies received during yr. 1959,	4887.31	
Jan. 30/60 Plus deposit in Columbia Federal Bldg. Asso.	5791.20	
Jan. 30/60 Plus deposit in Prudential Bldg. Asso.	3078.63	
<b>1959</b>		
Money spent as per checks and receipts		\$6107.22
Jan. 30/60 Cash on deposit, Columbia Federal Bldg Asso.		5791.20
Jan. 30/60 Cash on deposit, Prudential Bldg. Asso.		3078.63
Jan. 30/60 Bal. cash on deposit at First National Bank (1313 G St., N.W.)		2041.61
	\$17,018.66	\$17,018.66
Committee requests 5% on the amount of \$1107.22, which is amt. above Bldg. & Loan Deposits		

District of Columbia, to wit:

I/we the undersigned, Ethelbert B. Frey, Committee, do solemnly swear that the foregoing account is just and true, and that I have bona fide paid, or secured to be paid, the several sums for which I claim credit and allowance.

/s/ Ethelbert B. Frey, Committee

Sworn to and subscribed before me this 8th day of February, A.D. 1960.

HARRY M. HULL, Clerk

By /s/ Robert C. Huey  
Deputy Clerk

[fol. 18]

## IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS  
IN THE HANDS OF ETHELBERT B. FREY, COMMITTEE—  
Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Ethelbert B. Frey, Committee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Porter, in the amount of \$11,136.44, as admitted by the answer of said Committee, filed herein on March 1, 1960, subject to the claim of said Committee in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey  
/s/ Dyer Justice Taylor

• • • •

## IN UNITED STATES DISTRICT COURT

### MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS IN THE HANDS OF PRUDENTIAL BUILDING ASSOCIATION— Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against [fol. 19] the credits of the defendant, Harry Clifford Porter, in the hands of Prudential Building Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Porter, in the amount of \$3,078.63, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees

has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey  
/s/ Dyer Justice Taylor

• • • •

## IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT OF CONDEMNATION AGAINST CREDITS  
IN THE HANDS OF COLUMBIA FEDERAL SAVINGS & LOAN  
ASSOCIATION—Filed March 17, 1960

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Columbia Federal Savings & Loan Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee, Estate of Harry C. Porter, in the amount of \$5,791.20, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers [fol. 20] to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the

Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey  
/s/ Dyer Justice Taylor

. . . .

IN UNITED STATES DISTRICT COURT

EXHIBIT A—Filed July 14, 1960

Law Offices of  
LASKEY and LASKEY  
Albee Building, 1426 G Street, N.W.  
Washington, D. C.  
Zone 5

June 7, 1960

The Honorable Luther W. Youngdahl  
United States Courthouse  
Constitution Ave. & John Marshall Place  
Washington, D. C.

Re: Aetna v. Porter  
C. A. No. 57-57

Dear Judge Youngdahl:

The purpose of this letter is to transmit additional information which we request that you consider in acting upon our motions for judgment of condemnation in the above-entitled case.

[fol. 21] One of the savings and loan associations against whom we have moved for a judgment of condemnation is

the Columbia Federal Savings and Loan Association, 730 11th Street, N.W. The enclosed material consisting of a letter and pamphlet from the Association, was unsolicited and apparently sent to all members of the legal profession of the District of Columbia. The material is self-explanatory and indicates that the Association considers that money placed with its Association is an "investment." It is our position, as set forth in our memorandum of points and authorities, that "investments" of veterans' benefits are not exempt from attachment.

Very truly yours,

LASKEY and LASKEY

By /s/ John L. Laskey  
/s/ Dyer Justice Taylor

DJT/df

Encl.

cc: E. B. Frey, Esq.

EXHIBIT B—Filed July 14, 1960

COLUMBIA FEDERAL SAVINGS  
AND LOAN ASSOCIATION  
730 ELEVENTH STREET, N.W.  
WASHINGTON 1, D.C.

May 27, 1960

Mr. Dyer J. Taylor  
Albee Building  
Washington 5, D. C.

Dear Mr. Taylor:

The local District Court rules relating to the investment of trust funds were amended on March 2, 1960 to permit investments up to \$10,000 each in twenty-four local insured savings and loan associations, or a total investment of \$240,000 for any one fiduciary account.

Rule 23, as amended by striking out a now discarded \$20,000 limitation, reads:

[fol. 22] "Federal Savings and Loan Associations, Building and Loan Associations, and Savings and Loan Associations. Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

Columbia Federal Savings and Loan Association, with its four conveniently located offices, qualifies under the rule. Its current dividend rate is 4% per annum, compounded quarterly. Accounts may be opened and maintained by mail.

We hope you will place the enclosed folder, which contains all the forms necessary to open an account with us, in your files. A limited number of these folders is available should you wish another for an associate in your office.

We would welcome an opportunity to serve you.

Sincerely yours,

/s/ Joseph P. Burke, Jr.

JOSEPH P. BURKE, JR.  
Vice President



[fol. 23]

## EXHIBIT C

✓  
Exhibit C

23

**Who May Have Accounts**

Accounts may be held by the following:

One person alone	A guardian or trustee
Two persons, payable to either or survivor	either a person or a corporation, for a minor or incompetent
One person, as trustee for another	An executor or administrator
Two persons, as joint trustees for another	A corporation
One person, with power of attorney granted to another	A club, society, lodge, or association
	A partnership
	A credit union

We have a savings account for every purse and purpose.

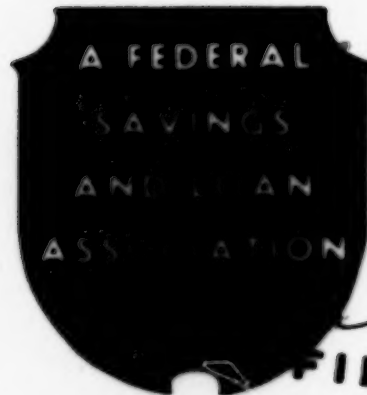
**YOU'LL LIKE THE FRIENDLY SERVICE YOU GET HERE**

You're always a welcome visitor here. We want you to use these friendly quarters for every service we can render. Drop in whenever it's convenient and meet the neighborly people in our savings department. Or, if it's home financing advice you require, you'll find our mortgage loan advisers ready to talk over your problems in the light of present-day conditions. We've been your neighbors for a long time, and we'd like to know you even better!

HARRY M. HULL, CLERM

JUL 14 1960

FILED



FILED

offering

JUL 14 1960

HARRY M. HULL, CLERK

**An Insured Investment**

for

**ADMINISTRATORS****EXECUTORS****FIDUCIARIES***E. H. H. C.*

**Columbia Federal Savings  
AND LOAN ASSOCIATION**

730 ELEVENTH STREET, N. W.  
1726 PENNSYLVANIA AVENUE, N. W.  
5301 WISCONSIN AVENUE, N. W.  
2826 ALABAMA AVENUE, S. E.  
REpublic 7-7111

# SAFEGUARDING YOUR SAVINGS

## Safety of Savings Assured

(1) Our investments are limited by law to loans secured by first liens on real estate (almost all on homes and repayable monthly with a monthly reduction in the balance owed); to securities of the United States Government; to home improvement loans; and to stock in the Federal Home Loan Bank.

(2) By Act of Congress, each member's account is permanently insured against loss up to \$10,000 by the Federal Savings and Loan Insurance Corporation, an agency of the United States Government. Columbia Federal is Washington's First Insured Savings Association.

## Earnings on Accounts

From interest earned by investments, and from interest paid by borrowers, the association pays expenses, sets aside reserves and distributes the net earnings quarterly to savers. Earnings are computed on a monthly basis—all funds received up to the tenth of any month earn from the first of that month if left to the end of the quarterly earnings period. Earnings may be credited to your account or paid by check, as you direct. Columbia Federal has never missed making a dividend payment since its founding in 1907. Our careful, conservative management has consistently maintained a policy of adding substantially to reserves—thus further assuring the stability of this Association.

## No Fluctuation or Risk

Accounts here are non-assessable, and are always worth 100 cents on the dollar. There are no charges or fees made to establish or close your account at Columbia Federal.

## Flexibility

Our savings plan is extremely flexible—accounts may be opened in any amounts and added to with any amount at any time. Additions and withdrawals are entered in a pass-book, which you receive when you open your savings account here. Liberal earnings on your savings account are credited and compounded four times each year.

## Withdrawal Privileges

To meet cash needs, we maintain substantial demand deposits in commercial banks and investments in readily-convertible United States Government Securities. A steady inflow of funds results from monthly payments on mortgage loans. To this is added a line of credit fixed for each association by the Federal Home Loan Bank of the association's district, with 50% of savings as the maximum. Since organization, it has been our policy and practice to pay withdrawals promptly on demand.

[fol. 25]

## IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—July 14, 1960

Plaintiff has a judgment against the defendant in the amount of \$16,459.72 and has issued attachments and moved for judgment of condemnation as to the following bank accounts which are in the name of the defendant's committee, Ethelbert B. Frey:

Prudential Building Association	\$3,078.63
Columbia Federal Building Association	5,791.20
First National Bank	2,266.61

The two building association accounts draw interest; the First National account is a checking account and draws no interest.

Defendant's committee asserts that these accounts result from the payment of veteran's benefits; 38 U.S.C. § 3101 disallows execution on such benefits; and therefore defendant's motion to quash the attachments must be granted and plaintiff's motion for judgment of condemnation denied.

38 U.S.C. § 3101 reads, in pertinent part:

"(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. • • •"

The question presented by this case is whether the exemption applies to these accounts or, whether the ac-

counts are "property purchased in part or wholly out of such payments", rendering the exemption unavailable. [fol. 26] able.<sup>1</sup>

In *Trotter v. Tennessee*, 290 U.S. 354 (1933), the Supreme Court held that lands purchased with veterans' benefit payments were subject to taxation, the benefits having lost their exempt status when they were "converted into land and buildings". (290 U.S. at 356).

In *Lawrence v. Shaw*, 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a bank did not thereby render the funds non-exempt.

"These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof." (300 U.S. at 250)

Accordingly, it has been held in this Circuit that a checking account is exempt. *Williams v. United States Fidelity & Guaranty Co.*, 71 App. D.C. 9, 107 F.2d 210 (1939). Is a savings account in a building association exempt?

In *Carrier v. Bryant*, 306 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veteran's benefits by a veteran's guardian were exempt from execution on a judgment against the veteran.<sup>2</sup> The Court held the prop-

<sup>1</sup> Plaintiff has also contended that the moneys in First National are commingled exempt and non-exempt funds. Whether the plaintiff will contend, after considering this opinion, that any of the funds are not exempt is unclear from the record. In any event, the identity of the funds can be ascertained from the committee's records and so, commingling, if it did occur—and it is not clear from the record that there were deposits of non-exempt funds, the \$2,000 transfer from Prudential clearly being exempt—would not serve to make the entire account amenable to execution. *Appanoose County v. Henke*, 207 Iowa 835, 223 N.W. 876 (1929); cf. *Pentz v. First National Bank*, 75 Pa. S.Ct. 1 (1920). Only those funds not given immunity by § 3101 would be subject to execution. The motions now before the Court shall be disposed of without prejudice to a future determination, if counsel cannot agree, as to the true nature of the First National Account.

<sup>2</sup> The statute there involved was §3 of the Act of August 12, 1935, c. 510, 49 Stat. 607, 609 which was not significantly different from 38 U.S.C. § 3101.

[fol. 27] erty subject to execution, quoting from the *Lawrence* case to the effect that

“The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to *investments*, as was ruled in the *Trotter* case.” (306 U.S. at 550, quoting from 300 U.S. at 250) (emphasis supplied).

The plaintiff has seized upon this word “investment”, pointed to Local Rule 23-II-a<sup>3</sup> and concluded that the defendant’s funds are “investments” and therefore not exempt under 38 U.S.C. § 3101.

But as Mr. Justice Holmes has instructed us:

“A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” *Towne v. Eisner*, 245 U.S. 418, 425 (1918)

And see *International Stevedoring Co. v. Haverty*, 272 U.S. 50 (1926). Because our Local Rules speak of a deposit in a savings and loan association or a building association as an “investment” does not necessarily mean it is an “investment” in *Lawrence v. Shaw* terms and thus unexempt under 38 U.S.C. § 3101. The inquiry, it seems to the Court, must go further. *In re Bowen*, 141 Ohio St. 602, 49 N.E. 2d 753 (1943), urged by the plaintiff, is therefore not persuasive.

[fol. 28] Section 3101 does not speak of “investment”. The statute speaks of “any property purchased in part or wholly out of such payments”. When Mr. Chief Justice

---

<sup>3</sup> “Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

\* \* \* \*

Section II-a. FEDERAL SAVINGS AND LOAN ASSOCIATIONS, BUILDING AND LOAN ASSOCIATIONS, AND SAVINGS AND LOAN ASSOCIATIONS. Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000 in one institution, \* \* \*.”

Hughes used the word "investment" in *Lawrence v. Shaw*, quoted above, he was referring to the *Trotter* case. The only sentence in *Trotter* in which the word "investment" appears is the following:

"We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises." (290 U.S. at 357).

Reading the word "investment" in the light of this statement is quite revealing: an immunity was not to extend to *permanent* investments. As further clarification, the Court said:

"\* \* \* we think it very clear that there was an end to the exemption when they *lost the quality of moneys* and were *converted* into land and buildings." (290 U.S. at 356) (emphasis supplied)

Moneys deposited in a building association by the committee of a veteran have not "lost the quality of moneys", they have not been "converted" into "property".<sup>4</sup>

Indeed, in *Lawrence*, bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments", the Court carefully pointed out "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity [fol. 29] where it would otherwise attach." The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, but rather the ease with which "the proceeds of the collection are subject to draft upon demand for the veteran's use." (300 U.S. at 250). As a practical matter, a withdrawal from

---

<sup>4</sup> That a depositor in a savings and loan or building association may conceptually purchase "shares" in the association and thus be an "owner" rather than a creditor-depositor of the association is a matter of form, which, in the opinion of the Court, should have no bearing on the resolution of the problem here involved—just as the probability that a depositor in a checking account will not receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in *Williams*, *supra*. And see *Elbert Sales Co. v. Granite City Bank*, 192 S.E. 66 (1937).



a savings account can be accomplished as quickly as a withdrawal from a checking account—and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account, likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See *Mixon v. Mixon*, 203 N.C. 566, 166 S.E. 516 (1932); *Yake v. Yake*, 170 Md. 75, 183 A. 555 (1936); cf. *Hoeppe v. Westover*, 79 F.Supp. 794 (D.C. Cal. 1948).

The plaintiff's motions will be denied with the exception that the amounts in the building association accounts representing interest, \$78.63 in Prudential and \$791.20 in Columbia, and the amounts in the First National attributable to non-exempt funds, if any, shall be condemned. The defendant's motion to quash the attachments is granted with the above limitations.

Counsel to submit order reflecting the above.

/s/ Luther W. Youngdahl  
Judge

July 14, 1960

## IN UNITED STATES DISTRICT COURT

ORDER—September 13, 1960

The above cause came up for a hearing at this term of Court on an attachment, a motion to quash, and a motion for Condemnation.

That thereafter and after a hearing was had in open court by the attorneys of the respective parties on all three motions—

This court took the matter under consideration and from his opinion filed on July 14th., 1960 finds—

[fol. 30] That the motion to quash the attachment be granted, with the exception of interest accrued on deposit

with Columbia Building Association account to the amount of seven hundred ninety-one dollars and twenty cents, (\$791.21) and interest on deposit in the Prudential Building Association in the amount of seventy-eight dollars and sixty-three cents, (\$78.63) and any amount in the First National Bank attributable to non-exempt funds.

From information received by the court, there are no funds at present in the First National Bank,

THEREFORE, It is ordered this 13 day of Sept., 1960, that the motion to quash the attachment be granted and that the committee and attorney for the defendant, Harry Clifford Porter, is to turn over to the plaintiff, through his attorney of record, John Laskey, the total sum of eight hundred sixty-nine dollars and eight-three cents, (\$869.83).

It is ordered that the motion to quash the attachment is hereby granted with the above stipulation.

It is further ordered that the plaintiff may file as its exhibits herein, rules, regulations and withdrawal requirements of the garnishees, Columbia Building Association and Prudential Building Association.

/s/ Luther W. Youngdahl  
Judge

/s/ Ethelbert B. Frey

Seen: John L. Laskey

A certified copy of this Order will be delivered to the Columbia Building Association, the Prudential Building Association and the First National Bank.

/s/ Luther W. Youngdahl  
Judge



# IN UNITED STATES DISTRICT COURT

EXHIBITS FILED PURSUANT TO COURT ORDER OF  
SEPTEMBER 13, 1960—Filed November 1, 1960

31

[Columbia Federal Savings  
& Loan Association]

SAVINGS ACCOUNT

No.

*This Certifies that*

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION



INSURED PROTECTION

for Your Savings

+

Safety of your Savings Account in Columbia Federal Savings is automatically insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government, created by Act of Congress, June 27, 1934.

The individual Savings Account of each member is insured up to \$10,000. Joint accounts and trustee accounts are similarly protected. A husband and wife can each have an account insured up to \$10,000, and a joint account insured up to \$10,000; thus a total of \$30,000 is insured.

SAVE AND BORROW WITH CONFIDENCE

IN

COLUMBIA FEDERAL SAVINGS



## IMPORTANT

This book must be presented with every transaction.

Remittances may be made through the mail, by check or money order. All items credited in this book are subject to collection and final payment in cash.

Members should notify the Association of any change of address.

A Savings Account is provided for persons desiring to save a part of their regular income for future use. We suggest that a regular payment be made each month, although that is not required. Systematic Saving is the way to become successful and financially independent.

Dividends are declared and paid by the Association on June 30th and December 31st of each year. Dividends on Savings Accounts are computed on a monthly basis, and are compounded and added to each account semi-annually; earnings being allowed on each payment from the first of each month when made on or before the tenth of such month. Dividends are not allowed on withdrawals made between dividend dates.

CS

### COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

WASHINGTON, D. C.

*Washington's First Insured Savings Association*

#### TRANSFER OF ACCOUNT

For value received the undersigned hereby sells, assigns and transfers to

the account represented by the within certificate of

#### COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

and does hereby irrevocably constitute and appoint the officers of said Association to transfer said account on the books of said Association.

This ..... day of ..... , 19 .....

Signature\* .....

In the presence of .....

The undersigned is the transferee of the account represented by the within certificate and has executed application for the account and signature card.

Signature\* .....

Transfer entered of record ..... , 19 .....

#### COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

By .....

\*NOTE: Signature of any one co-tenant (with right of survivorship) is binding on the others.

33

[The Prudential  
Building Association]

Shares \_\_\_\_\_

No. \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ member of The Prudential Building Association, Washington, D. C.,  
subject to the lawful provisions of its constitution and by laws.

Date \_\_\_\_\_ 19 \_\_\_\_\_

**ALWAYS BRING THIS BOOK WITH YOU  
OR MAIL WITH PAYMENT.**

**IMPORTANT**

This book must accompany all transactions.

Remittances may be made through the mail by check or money order.

All items credited in this book are subject to final collection of check or draft.

Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.

Keep this book smooth and clean. If lost, notify the Association immediately.

Safety of your Account in this Association is fully insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.

# THE PRUDENTIAL BUILDING ASSOCIATION

Washington, D. C.

Shares \_\_\_\_\_

Per Value \$50.00 per share

## OPTIONAL SHARE CERTIFICATE

THIS CERTIFIES that \_\_\_\_\_

he \_\_\_\_\_ subscribed for and made the initial payment upon \_\_\_\_\_ Optional Shares of the undersigned. This certificate is issued, and by the acceptance hereof, is held subject to all the provisions of the laws of the District of Columbia, the Certificate of Incorporation and By-Laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof in person, or by duly authorized attorney, upon written order of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes without being affected by any notice to the contrary until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for and has been accepted as a member of the undersigned.

The holder hereof may make payments in such amounts and at such times as he may elect until, together with the dividends apportioned and credited hereto, the full par value of shares represented hereby shall have accumulated, whereupon the certificates shall become full paid and non-assessable and shall thereupon be exchangeable for a full-paid share certificate at the option of the holder hereof without cost.

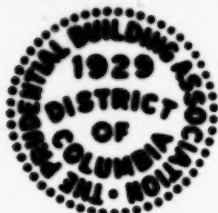
The holder hereof is entitled to semi-annual apportionment and credit of dividends on the first days of January and July of each year as may be determined by the Board of Directors out of net profits, undivided profits or surplus of the undersigned, sharing equally with all shares issued by the undersigned, pro rata to paid-in value, including credited dividends, provided, however, that the Board of Directors in its discretion may pay or apportion and credit dividends upon shares of the association in connection with which a membership fee has heretofore been paid at a rate not exceeding one per cent greater than the rate of dividends apportioned and credited to shares of the association in connection with which no membership fee has heretofore been paid. The holder hereof is entitled to equal distribution of net assets with all other shares issued by the undersigned, pro rata to paid-in value, including credited dividends, in the event of voluntary or involuntary liquidation, dissolution or winding up of the undersigned.

The shares represented hereby may be withdrawn at any time upon thirty days' written notice to the undersigned of intention to withdraw; provided, however, that if such shares are pledged as security for an obligation to the undersigned the full amount of such withdrawal shall be first applied in payment of such obligation. Withdrawal applications shall be filed and paid in the order of their receipt, provided, that at no time shall the undersigned be required to apply in payment of withdrawal applications more than one-half of the funds in the treasury. Upon withdrawal the holder shall be entitled to receive the amount paid in, together with such dividends as shall have been declared thereon, less all fines due and a proportionate part of all losses and other charges incurred.

WITNESS, the seal of the undersigned and the signature of its duly

authorized officer, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

THE PRUDENTIAL BUILDING ASSOCIATION



Authorized Signature

**CHARTER AND BY-LAWS**  
**OF**  
**Columbia Federal Savings**  
**AND LOAN ASSOCIATION**

**ESTABLISHED 1907**



**730 ELEVENTH STREET, N. W.**

**WASHINGTON 1, D. C.**

**MEMBER**

**FEDERAL HOME LOAN BANK SYSTEM**

**FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**



or decrease the number of directors of the association, shall be stated in writing and filed with the secretary of the association on or before thirty (30) days before the date of the annual meeting, and all business so stated, proposed and filed, shall be considered at the annual meeting, but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary thirty (30) days before the meeting such proposal shall be laid over for action at an adjourned, special or regular meeting of the members taking place thirty (30) days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

14. **Voting by proxy.** Voting at any annual or special meeting of the members may be made by proxy, it being provided that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, at least five (5) days prior to the date on which such meeting shall convene.

15. **Bylaws.** The association shall be bound to pay home loan regular payments on savings accounts to persons who have not failed in the rules and regulations made by the Federal Reserve Bank.

**AT ANNUAL MEETING  
JAN. 20, 1954**

## CHARTER N

1. **Corporate title.** The full corporate title of the Federal association hereby chartered is

**Columbia Federal Savings and Loan Association**

2. **Office.** The home office shall be located at Washington, in the District of Columbia.

3. **Objects and powers.** The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes, and, in the accomplishment of such objects, it shall have perpetual succession and power: (1) to act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as he may prescribe, and shall perform all such reasonable duties as fiscal agent of the United States as he may require and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (2) To sue and be sued, complain and defend in any court of law or equity; (3) To have a corporate seal, affixed by imprint, facsimile or otherwise; (4) To appoint officers and agents as its business shall require, and allow them suitable compensation; (5) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and this charter; (6) To raise its capital, which shall be unlimited, by accepting payments on savings accounts representing share interests in the association; (7) To borrow money; (8) To lend and otherwise invest its funds; (9) To wind up and dissolve, merge, consolidate, convert, or reorganize; (10) To purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; (11) To mortgage or lease any real and personal estate and take such property by gift, devise, or bequest; and (12) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers. It shall exercise its powers in conformity with all

(c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for savings accounts or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

**8. Execution of instruments, generally.** All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board of directors. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board of directors may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositories shall be made in such manner as the board of directors may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by or standing in the name of the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other person or persons thereunto authorized by the board of directors.

**9. Savings account certificates.** Such officers or employees as may be designated by the board of directors shall deliver to each person upon the initial payment on his savings account in the association an account book or other written evidence of such account.

**10. Seal.** The seal shall be two concentric circles between which shall be the name of the association. The year of

the next annual meeting of the members. Directors shall be elected for periods of 3 years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board of directors each year.

**6. Withdrawals.** The association shall have the right to pay the withdrawal value of its savings accounts at any time upon application therefor and to pay the holders thereof the withdrawal value thereof. Upon receipt of a written request from any holder of a savings account of the association for the withdrawal from such account of all or any part of the withdrawal value thereof, the association shall within 30 days pay the amount requested; **Provided**, That if the association is unable to pay all withdrawals requested at the end of 30 days from the date of such requests, it shall then pay all withdrawals requested in accordance with such methods and procedures as to amounts and allotments of funds for such purposes as shall be provided in regulations made by the Home Loan Bank Board in effect at the date of the request for withdrawal. Holders of savings accounts for which application for withdrawal has been made shall remain holders of savings accounts until paid and shall not become creditors.

**7. Redemption.** At any time sufficient funds are on hand, the association shall have the right to redeem, by lot or otherwise as the board of directors may determine, all or any part of any of its savings accounts on June 30 or December 31, by giving 30 days' notice of such redemption by registered mail addressed to the holder of each such savings account at his last address as recorded on the books of the association. The association may not redeem any of its savings accounts when there is an impairment of its capital or when it has any request for withdrawal which has been on file and unpaid for more than 30 days. The redemption price of each savings account redeemed shall be the full value thereof, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal amount of such savings account. If a savings account which is redeemed is entitled to participate in any reserve for bonus, the amount in such reserve for bonus which is properly allocable to such savings account shall be paid as part of the redemption price thereof. If any notice of redemption shall have been duly given, and if the funds necessary for such redemption shall have been set aside so as

association. Such notice shall state the name of the association, the place of the annual meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such special meeting shall convene to each of its members of record at his last address appearing on the books of the association. Such notice shall state the name of the association, the purpose or purposes for which the meeting is called, the place of the special meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any special meeting of members, notice thereof need not be given to such member.

4. Meetings of the board of directors. The board of directors shall meet regularly without notice at the home office of the association at least once each month at the hour and date fixed by resolution of the board of directors, provided that the place of meeting may be changed by the directors. Special meetings of the board of directors may be held at any place in the territory in which the association may make loans specified in a notice of such meeting and shall be called by the secretary upon the written request of the president, or of three directors. All special meetings shall be held upon at least 3 days' written notice to each director unless notice be waived in writing before or after such meeting. Such notice shall state the place, time, and purposes of such meeting. A majority of the directors shall constitute a quorum for the transaction of

the 6 months' period to be distributed promptly on its savings accounts, ratably, as declared by the board of directors, to the withdrawal value thereof; in lieu of or in addition to such net earnings, any of the association's surplus funds may be likewise distributed. Such net earnings shall be credited to savings accounts or paid, as directed by the owner. All holders of savings accounts shall participate at the same rate and on the same basis in the distribution of earnings: **Provided**, That the association is not required to distribute earnings on short-term savings accounts or on accounts of \$10 or less. Except as provided above, earnings shall be declared on all savings accounts of record at the close of each such 6 months' period, on the withdrawal value of each such account at the beginning of the said 6 months' period, plus the payments made thereon during such period (less amounts withdrawn, and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided below. The date of investment shall be the date of actual receipt of such payments by the association, unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on savings accounts or designated classes thereof. Payments, affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month. Payments, affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month. Notwithstanding any other provision of its charter, the association may distribute net earnings on its savings accounts on such other basis and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the Home Loan Bank Board. All holders of savings accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their savings accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.



11. **Amendment of charter.** No amendment, addition, alteration, change, or repeal of this charter shall be made unless such proposal is made by the board of directors of the association, and submitted to and approved by the Home Loan Bank Board, and is thereafter submitted to and approved by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective, if filed with and approved by the Home Loan Bank Board, as of the date of the final approval of, or as fixed by, the members.

Issued at Washington, D. C., this 17th day of October, 1949.

(Seal)

Home Loan Bank Board,

**FILED**

By: **WILL K. DIVERS**  
(Chairman)

**NOV 1 1960**

Attest:

**J. FRANCIS MCHARRY M. HULL, Clerk**  
(Secretary)

Charter No. 1600

Original Federal Charter issued October 25, 1939.

## BY-LAWS

### COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

1. **Annual meetings of members.** The annual meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held at its home office at 2 o'clock in the afternoon on the third Wednesday in January of each year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other time on such day or at such other place in the same community as the board of directors may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year, and shall outline a program for the succeeding year. Annual meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

2. **Special meetings of members.** Special meetings of the members of the association may be called at any time by the president or the board of directors, and shall be called by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least one-tenth of the capital of the association. Such written request shall state the purposes of the meeting and shall be delivered at the home office of the association addressed to the president. Special meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

3. **Notice of meeting of members.** (a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such annual meetings shall convene to each of its members of record at his last address appearing on the books of the

to be and to continue to be available for that purpose, earnings upon such account shall cease to accrue from and after the date specified as the redemption date and all rights with respect to each such account shall forthwith, after such redemption date, terminate, except only the right of the holder of record of such savings account to receive the redemption price thereof without earnings.

8. **Loans and investments.** The association may make any loan or investment authorized by statute and the rules and regulations made by the Home Loan Bank Board and in effect on August 15, 1949. It may make such additional loans and investments as may thereafter be authorized by amendments of the said rules and regulations.

9. **Power to borrow.** The association may borrow money in an aggregate amount not exceeding one-half of its capital; the amount which may be borrowed from sources other than a Federal home loan bank shall not exceed one-tenth of such capital. Notwithstanding the foregoing limitations, the association may, with prior approval by the Home Loan Bank Board, borrow from a Federal home loan bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

10. **Reserves, surplus, and distribution of earnings.** The association shall maintain general reserves for the sole purpose of meeting losses; such reserves shall include the reserve required for insurance of accounts. Any losses may be charged against general reserves. If and whenever the general reserves of the association are not equal to at least 10 percent of its capital, it shall, as of June 30 and December 31 of each year, credit to such reserves an amount equivalent to at least 5 percent of its net earnings for the 6 months' period, or such amount as may be required by the Federal Savings and Loan Insurance Corporation, whichever is greater, until such reserves are equal to at least 10 percent of the association's capital. As of June 30 and December 31 of each year, after payment or provision for payment of all expenses, credits to general reserves and such credits to surplus as the board of directors may determine, and provision for bonus on savings accounts as authorized by regulations made by the Home Loan Bank Board, the board of directors of the association shall cause the remainder of the net earnings of the association for

business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors. All meetings of the board of directors shall be conducted in accordance with Roberts' Rules of Order.

11. **Officers, employees, and agents.** Annually at the meeting of the board of directors of the association next following the annual meeting of the members of the association, the board of directors shall elect a president, one or more vice presidents, a secretary, and a treasurer: *Provided*, That the offices of secretary and treasurer may be held by the same person, and a vice president may also be either the secretary or the treasurer. The board of directors may appoint such additional officers and such employees and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board of directors. In the absence of designation from time to time of powers and duties by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

12. **Resignation of directors.** Any director may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the secretary. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

13. **Powers of the board.** The board of directors shall have power—

(a) To appoint and remove by resolution the members of an executive committee, the members of which shall be directors, which committee shall have and exercise the powers of the board of directors between the meetings of the board of directors;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof;

laws of the United States as they now are, or as they may hereafter be amended, and with all rules and regulations which are not in conflict with this charter now or hereafter made thereunder.

4. **Members.** All holders of the association's savings accounts and all borrowers therefrom are members. In the consideration of all questions requiring action by the members of the association, each holder of a savings account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of his account. A borrowing member shall be permitted, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of a savings account. No member, however, shall cast more than 30 votes. Voting may be by proxy. Any number of members present at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of members shall determine any question. The members who shall be entitled to vote at any meeting of the members shall be those owning savings accounts and borrowing members of record on the books of the association at the end of the calendar month next preceding the date of such meeting. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of the end of the calendar month next preceding the date of such meeting. Those who were members at the end of the calendar month next preceding the date of a meeting of members but who shall have ceased to be members prior to such meeting shall not be entitled to vote thereat. All savings accounts shall be nonassessable.

5. **Directors.** The association shall be under the direction of a board of directors of not less than 5 nor more than 15, as fixed in the association's bylaws or, in the absence of any such bylaw provision, as from time to time expressly determined by resolution of the association's members. Each director of the association shall be a member of the association, and a director shall cease to be a director when he ceases to be a member. Directors of the association shall be elected by its members by ballot: *Provided, That* in the event of a vacancy in the directorate, including vacancies created by an increase in the number of directors, the board of directors may fill such vacancy, if the members of the association fail so to do, by electing a director to serve until

incorporation, the word "incorporated," or an emblem may appear in the center.

11. **Amendment.** These bylaws may be amended at any time by a two-thirds affirmative vote of the board of directors, or by a vote of the members of the association. Each and every amendment shall be subject to the approval of the Home Loan Bank Board, and shall be ineffective until such approval shall be given: *Provided, That*, without the approval of the Home Loan Bank Board, section 1 of the bylaws may be amended so that the time of day for convening the annual meeting may be fixed at any hour not earlier than 10 a. m. or later than 9 p. m., and a section providing for a bonus may be added or repealed as provided in the rules and regulations for the Federal Savings and Loan System.

12. **Nominating committee.** The president, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors in writing, and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 15 days' period prior to the date of the annual meeting. *Provided,* such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 10 days' period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the president shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

13. **New business.** Any new business to be taken up at the annual meeting, including any proposal to increase

## NOTICE

IN ORDER THAT MEMBERS MAY CLEARLY UNDER-  
STAND THEIR RIGHTS AND PRIVILEGES IN  
THIS ASSOCIATION. IT IS RECOM-  
MENDED THAT THE FOLLOWING  
SECTIONS BE CAREFULLY  
READ:

### CHARTER

Section 4. Members.

Section 6. Withdrawals.

Section 10. Reserves, surplus and distri-  
bution of earnings.

### BY-LAWS

Section 1. Annual Meeting of Members.

---

---

## INSURED PROTECTION

### For Your Savings

Under an Act of Congress,  
approved June 27, 1934, the full amount  
of each Member's savings  
in this Association  
is automatically—

**INSURANCE COVERAGE NOW \$10,000**

**INSURED AGAINST LOSS  
UP TO \$5,000**

---

by the Federal Savings and Loan  
Insurance Corporation,  
an instrumentality of the  
United States Government.

---

---

[fol. 43]

# IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed September 15, 1960

Notice is hereby given this 15th day of September, 1960, that Aetna Casualty & Surety Company hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 13th day of September, 1960, in favor of Harry Clifford Porter against said Aetna Casualty and Surety Company.

/s/ John L. Laskey  
Attorney for Plaintiff

• • • •

# IN UNITED STATES DISTRICT COURT

APPELLANT'S STATEMENT OF THE PARTS OF RECORD TO  
BE PRINTED IN JOINT APPENDIX—Filed  
November 18, 1960

Appellant Aetna Casualty and Surety Company designates the following portions of the record herein to be printed in the Joint Appendix to appellant's brief:

1. The Judgment of February 8, 1960;
2. Attachment on Judgment and Interrogatories issued to Columbia Federal Savings and Loan Association on February 24, 1960;
3. Attachment on Judgment and Interrogatories issued to Eethelbert B. Frey, Esq. on February 24, 1960;
4. Attachment on Judgment and Interrogatories issued to Prudential Building Association on February 24, 1960;
5. Answer of Columbia Federal Savings and Loan Association to Attachment and to Interrogatories;
6. Answer of Prudential Building Association to Attachment and to Interrogatories;

7. Answer of Ethelbert B. Frey, Esq. to Attachment and to Interrogatories;

8. Motion to Quash Attachment by Ethelbert B. Frey, Esq. filed March 1, 1960;

[fol. 44] 9. Exhibit A to Opposition of Plaintiff to Motion to Quash Attachment filed March 11, 1960;

10. Motion for Judgment of Condemnation Against Credits in Hands of Ethelbert Frey, Esq.;

11. Motion for Judgment of Condemnation Against Credits in Hands of Prudential Building Association;

12. Motion for Judgment of Condemnation Against Credits in Hands of Columbia Federal Savings and Loan Association;

13. Letter of June 7, 1960, addressed to Judge Youngdahl by Laskey and Laskey, said letter being labeled Exhibit A, together with attachments marked Exhibits B and C;

14. Memorandum Opinion of Judge Youngdahl of July 14, 1960;

15. Order of September 13, 1960;

16. Exhibits filed pursuant to Order of September 13, 1960;

17. Notice of Appeal filed September 15, 1960;

18. This Statement.

LASKEY and LASKEY

By /s/ John L. Laskey  
Attorney for Appellant

[fol. 45]

IN UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,066

AETNA CASUALTY AND SURETY COMPANY, APPELLANT

v.

HARRY CLIFFORD PORTER, APPELLEE

Appeal from the United States District Court  
for the District of Columbia

*Mr. John L. Laskey* for appellant.

*Mr. Ethelbert B. Frey* for appellee.

Before WILBUR K. MILLER, Chief Judge, and PRETTY-  
MAN and BURGER, Circuit Judges.

OPINION—Decided July 13, 1961

WILBUR K. MILLER, *Chief Judge*: Aetna Casualty and Surety Company appeals from an order of the District Court quashing its attachment of certain share or investment accounts in federal savings and loan associations which were established and augmented by Porter's committee from moneys received for him from the United States Veterans' Administration.

The situation which gave rise to the action should first be noted. Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia, employed one William F. Hickey as resident manager of [fol. 46] the Ritz Apartments, one of its properties. In the summer of 1952, Hickey hired the present appellee, Harry Clifford Porter, a non-commissioned officer in the United States Air Force, to paint the interiors of several apartment units in the development. The manager knew nothing about Porter except that he had seen him in military uniform, and made no investigation into his background or character. He directed Porter to paint the



apartment of one of the tenants, Miss Codie A. Whitman, a young lady who lived alone. Porter murdered Miss Whitman, for which he was subsequently indicted. His later trial resulted in a verdict of not guilty by reason of insanity.

After the murder, Miss Whitman's administratrix brought a wrongful death action against Gore, its manager, Hickey, and the American Security and Trust Company, Gore's collection agent, alleging they were negligent in hiring Porter without any investigation into his background or character, and in failing properly to supervise and control him. The trial court directed verdicts in favor of all defendants, and the plaintiff appealed. This court reversed and remanded, as to defendants Gore and Hickey.

The defense of the wrongful death action had been undertaken by Aetna Casualty and Surety Company, under the provisions of a policy of liability insurance which it had issued to Gore. Upon remand, counsel for Aetna effected a settlement of the suit, and the company paid the settlement amount. Thereafter, under the subrogation provision of the Gore policy, Aetna sued Porter to recover the money it had paid in Gore's behalf and was awarded judgment. On October 11, 1960, Porter's appeal therefrom was dismissed as frivolous by an order of this court.

After obtaining this indemnity judgment, Aetna attached the checking account of Porter's committee and also the share or investment accounts in two federal savings [fol. 47] and loan associations which stood in the name of the committee. The latter moved to quash the attachments on the theory that the bank checking account and the accounts in the federal associations were statutorily exempt from the claims of creditors,<sup>1</sup> because they were,

---

<sup>1</sup> 38 U. S. C. § 3101(a) is, in pertinent part, as follows:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment,

as he alleged, payments received by the committee under a law administered by the Veterans' Administration. The District Court granted the motion to quash except as to the dividends which had been added to the accounts in the federal associations. Apparently conceding that the checking account was exempt, Aetna states in its brief that this appeal is from the District Court's action "in quashing the attachments laid against the corpus of the investment accounts in the two savings institutions."

Thus the question is whether share accounts in federal savings and loan associations held by a veterans' committee are exempt from the claims of creditors because they were paid for with money received by the committee as "Payments of benefits due . . . under any law administered by the Veterans' Administration . . ."

The Supreme Court had before it, in *Trotter, Gdn. v. Tennessee*,<sup>2</sup> the question whether lands purchased by the [fol. 48] guardian of a veteran with moneys received from the United States for the use of the disabled ward are subject to taxation. The World War Veterans' Act, there involved, provided that "The compensation, insurance and maintenance and support allowance payments under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors . . . and shall be exempt from all taxation." Mr. Justice Cardozo, writing for a unanimous court, said, at pages 356-357:

" . . . The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. *McIntosh v. Aubrey*, 185 U.S. 122. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. [Cases cited.] Be that as it may, we think it very clear that there was an end to the exemption when they lost the

---

levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. . . ."

<sup>2</sup> 290 U. S. 354 (1933).

quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. . . ."

Although the *Trotter* case left open the question whether the exemption remains in force while the benefit payments remain in the veteran's hand "or on deposit in a bank," the Supreme Court thought it "very clear" that the exemption ends when the benefit payments are converted into permanent investments, land, buildings, bonds or shares of stock.

Congress answered the first of these reserved questions by providing that the payments shall not be liable to process "either before or after receipt by the beneficiary" in § 3 of the World War Veterans Act of 1935.<sup>3</sup> The [fol. 49] second question was answered by the Supreme Court in *Lawrence v. Shaw*<sup>4</sup> when it said concerning bank deposits stipulated to be "uninvested balances" of the government payments:

" . . . We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

<sup>3</sup> 49 STAT. 607, 609; 38 U. S. C. § 454a.

<sup>4</sup> 300 U. S. 245, 250-1 (1937).

The Supreme Court had occasion to construe 38 U. S. C. § 3101 in *Carrier v. Bryant*.<sup>5</sup> Relying on *Trotter v. Tennessee* and *Lawrence v. Shaw, supra*, the Court held that investments purchased with money received in settlement of benefits are not "payments due or to become due" which are statutorily exempt from the claims of creditors.

The immediate question is, therefore, whether the acquisition of share accounts in federal associations is an investment of the type the Supreme Court said is not exempt, or whether it is tantamount to an uninvested balance of government payments on deposit in a bank, which has been held to be exempt.

It appears that here the committee deposited in his ordinary checking account all government payments received by him. He paid out of that account the ordinary and necessary expenses incident to the veteran's care and maintenance, and built up the accounts in the federal associations by drawing from the checking account such sums [fol. 50] as he thought could be withdrawn without jeopardizing its adequacy for the payment of current expenses. This was done under the authority of Rule 23 of the District Court which governs the investment of trust funds.<sup>6</sup>

Obviously the committee created the accounts in the federal associations so that he might obtain for Porter

<sup>5</sup> 306 U.S. 545, 547 (1939).

<sup>6</sup> Rule 23 is in part as follows:

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

\* \* \*

"Section II-a. *Federal Savings and Loan Associations, Building and Loan Associations, and Savings and Loan Associations.* Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

some income from funds not immediately needed for his maintenance, which could not be obtained so long as such funds remained on deposit in his ordinary checking account. From this we conclude that the committee acquired the federal associations' shares by way of investing that portion of the government payments which he considered to be surplus income over and above ordinary and necessary expenses.

It may not be generally known, but it is nevertheless true, that federal savings and loan associations are not obligated to permit withdrawals on demand, but only to honor withdrawal requests within thirty days. This fact not only sharply distinguishes the share accounts from ordinary bank deposits by preventing their use as checking accounts, but also stamps them with the character- [fol. 51] istics of investments. A share account in a federal association is distinguishable from an ordinary bank savings deposit in other respects: the owner of the share account becomes, by virtue of that ownership, a voting member of the association and thus more nearly comparable to a stockholder of a bank than one of its depositors; and we have shown that, as a share account owner, he is not a creditor of the association as a depositor is a creditor of the bank. Indeed the Home Owners Loan Act under which a federal association is created describes the purpose as "to provide local mutual thrift institutions in which people may *invest* their funds . . ." (Emphasis added.) While it is not a controlling consideration, it should be noted that the yield on share accounts in a federal association is generally higher than on deposits in savings banks. *Cf. Wisconsin Bankers Association v. Robertson*, No. 16,212, decided this date.

We think it clear that the committee's accounts in the federal savings and loan associations were investments subject to the claims of creditors. It follows that the District Court erred in quashing the attachments. Its order will be set aside and the case will be remanded with instructions to deny the motion to quash and to grant the motion for judgment subjecting the share accounts to appellant's judgment debt.

*It is so ordered.*

PRETTYMAN, *Circuit Judge*, dissenting: The clear purpose of the Act "[t]o safeguard the estates of veterans derived from payments of pension," etc.,<sup>1</sup> is to make these benefit payments available for use in the current maintenance and support of the veteran, without interference [fol. 52] by taxes or creditors. Consistent with this principle the courts have held that so long as the payments remain as a bank deposit they are immune from outside absorption;<sup>2</sup> but, when they pass into the form of investments in land or buildings (which would indicate they are not currently needed), they lose their immunity. Thus, to my mind, the cases clearly implement the basic Congressional purpose.

In the case at bar the benefit payments were deposited in "Savings Account[s]" with federal savings and loan associations. This was not a disposition which made the funds difficult of availability for current purposes. The majority opinion points to rules of the associations requiring 30 days' notice for withdrawal, but at least one of them advertises (Ex. C) that since its organization in 1907 its practice has been to pay withdrawals promptly upon demand; indeed my understanding (which is such common understanding that I can take judicial notice of the fact) is that no such association in Washington requires such notice. In respect to ordinary savings accounts banks generally reserve a right to demand 30 or 60 days' notice,<sup>3</sup> but as a matter of custom the depositor can withdraw upon demand. Needs for current maintenance and support are not necessarily steady in amount month by month; such needs fluctuate; savings from the monthly income for several months may be accumulated to meet a recurrent need; a suit of clothes, potential doctors' bills, repairs to a home are a few examples from many familiar items. And in the case before us there are the potential needs of rehabilitation.

Of course the nature of some dispositions of funds is clear; purchases of land, stocks, etc., on the one hand and

<sup>1</sup> 49 STAT. 607 (1935).

<sup>2</sup> *E. g.*, *Lawrence v. Shaw*, 300 U.S. 245 (1937).

<sup>3</sup> See *Mallett v. Tunnicliffe*, 102 Fla. 809, 137 So. 238 (1931).



regular checking accounts in banks on the other. It seems to me that the facts surrounding the deposits we have [fol. 53] here would be material, even dispositive, in the case. On the naked legalisms they might be one or the other. On the facts their nature might clearly appear. Thus, if they had been left on deposit for a long time while current needs were met by other funds, or if their accumulation were much in excess of current needs (including a reasonable auxiliary reserve for contingencies), the deposits might clearly appear to be investments. But, if the facts were that these deposits were periodically used for current needs, or if they were actually so needed and were available and the committee intended so to use them, their nature as current deposits might clearly appear. Deposits in these associations may, as a bare legal matter, be one or the other.

I would not decide this case upon niceties of legalisms as to a "deposit" and an "investment". I would decide it on the broad intention of the statute, as construed by the courts, and the plain, simple facts of the case. Here the committee put part of the benefit payments in accounts in financial institutions where by practice they are readily available, meantime accumulating a small interest, surely as many a prudent person living on periodical payments would do; and now the committee says he wants to, and would, withdraw the funds for purposes of maintenance and support of the veteran.

The committee before us claims he can prove by documentary evidence that he actually needs, and would use, these funds to meet a bill already rendered him for current subsistence of this veteran.

I would remand the case for a factual determination of the nature of these deposits, *i.e.*, current deposits or investments in the sense in which the Supreme Court used that term in *the Lawrence case*.<sup>4</sup> I suppose the burden of proof should be on the committee, since he alone has the requisite information.

---

<sup>4</sup> *Supra* note 2.



[fol. 54] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

*Civil 57-57*

No. 16,066

AETNA CASUALTY AND SURETY COMPANY, APPELLANT

v.

HARRY CLIFFORD PORTER, APPELLEE

APPEAL FROM the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Chief Judge, and Prettyman and Burger, Circuit Judges.

JUDGMENT—July 13, 1961

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the order of the District Court appealed from in this cause be, and it is hereby, set aside, and that this cause be, and it is hereby, remanded to the District Court for further proceedings consistent with the opinion of this Court.

It is further ORDERED by the Court that appellant herein recover from appellee its taxable costs on this appeal, and have execution therefor.

Per Chief Judge Wilbur K. Miller.

Dated: July 13, 1961.

Separate dissenting opinion by Circuit Judge Prettyman.

[fol. 55] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Appeal from the United States District Court  
for the District of Columbia

PETITION FOR REHEARING EN BANC UNDER RULE 26—  
Filed July 26, 1961

Appellee, Harry Clifford Porter, an ex-service man stationed at Saint Elizabeths Hospital, through his committee and counsel, respectfully petitions this Honorable Court for a rehearing en banc of the appeal of this case decided July 13, 1961 and for reasons therefore states:

1. In its decision of July 13, 1961 this Court did not rule upon the fundamental and basic issues in the case, which are (a) whether the section of the *United States Code*, article 38-3101, page 125 and section 454 or 454A prevail in the matter of pension or disability funds which [fol. 56] *have not changed their identity*, and (b) whether such monies received by the veteran, through his committee, *who was appointed by this Honorable Court* and after receiving of certain sums, was *further instructed by the Court* to deposit from time to time in a savings account for the benefit of this veteran and his rehabilitation, took said monies out of the exemption clause of the *United States Code*, article 38-3101, pages 125 and sections 454 and 454A.

The Court erred when it held that money so deposited and which had *never lost its identity*, was attachable; this is contrary to all rulings of the United States Court for the District of Columbia. In *Re case of Arthur (vs) Kercoud*, mental health case # 35-57 and decided in December, 1959 by Judge Keech of the United States District Court for the District of Columbia. This same decision has been held in other cases by our Court and in many courts in other jurisdictions.

The Court erred in saying that the funds or money, so deposited was for stocks or shares in the savings associations. The record in the case will disprove that, as no shares were purchased as will be evidenced by the record of deposit books, exhibits A 1 and 2 and B 1 and 2. Photostats of original entries. They all hold, as well as the Probate Court of this jurisdiction, that should the depositor die, it would be treated as cash and not shares in said association.

The Court erred in holding that this particular case was in line with the cases cited in its opinion, *McIntosh v. Aubrey*, 185 U.S., *Trotter v. Tennessee*, 290 U.S., *Lawrence v. Shaw*, 300 U.S., and *Carrier v. Bryant*, 306 U.S., in which cases, so cited, in the opinion, *real estate, notes and mortgages* were purchased with pension or disability funds and in which cases your petitioner agrees that the said property, *real estate or notes and mortgages*, so purchased with disability funds, were not exempt from attachment and are not in line with this case.

The Court erred in holding that a savings association requires 30 days notice to withdraw money deposited therein; while there may be a rule for such in the associations, but no savings association in the District of Columbia requires any notice. It is a common rule and general practice, that one may deposit funds in an association, and the next day draw it out with the pass book, which is simplified banking.

[fol. 57] *The Court erred in going back and beyond the judgment and attachment, as the only matter to be decided was whether the United States Code, article 38-3101 and page 125, sections 454 or 454A is the controlling factor and the law covering veterans' pension or disability funds.*

In order to reply to that part of the opinion which goes beyond the judgment and attachment, petitioner relates the following facts; at the time of the incident referred to in 1952 in the opinion of the court, Harry Clifford Porter was declared of unsound mind and the so called confession of that date, which was used against him (an insane person) was wholly inadmissible as evidence, and as such, his constitutional rights have been

jeopardized, which have continued for nine years with no redress.

*His disability funds received by his committee in mental health case # 1714-52 were, by order of court, safely put away for his necessities, clothing, care and keep and for rehabilitation purposes, if and when he is released. That the monies, so deposited by order of Court, did not at any time lose its identity as disability funds.*

Lastly, that the recent opinion of the Court of Appeals of July 13, 1961, which was dissented to by *Judge Prettyman* of said Court, raises grave doubts as to the liability of veterans' pensions and disability funds against creditors which will affect thousands of ex-service men throughout the United States.

For the foregoing reasons it is respectfully submitted that the Court in its discretion may appropriately order a rehearing en banc.

/s/ Ethelbert B. Frey  
Committee & Attorney for Appellee

#### CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for a rehearing en banc is presented in good faith and not for delay.

/s/ Ethelbert B. Frey  
Committee & Attorney for Appellee

[fol. 58]

CERTIFICATE OF SERVICE  
(omitted in printing)

[fol. 59] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Appeal from the United States District Court  
for the District of Columbia

ANSWER TO PETITION FOR REHEARING EN BANC—  
Filed August 5, 1961

For the convenience of the Court, the Appellant, Aetna Casualty and Surety Company, states herewith a short history of this litigation, which is as follows:

Some years ago, the Appellant issued a general liability policy to Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia. Subsequently, the resident manager of one of the corporation's developments hired the Appellee, Harry Clifford Porter, a non-commissioned officer in the Air Force, to paint the interiors of certain apartment units in the development. Porter murdered one of the tenants, a young lady who lived alone. The serviceman's subsequent trial resulted in a verdict of not guilty by reason of insanity, and he was confined in St. Elizabeth's Hospital, where he still resides.

After the murder, the decedent's estate brought a wrongful death action against Appellant's insured. Trial resulted in directed verdicts in favor of the several Defendants. On appeal, this Court reversed and remanded. This is reported as *Kendall, Administratrix, etc. v. Gore Properties, Inc., et al.*, 98 U.S. App. D.C. 378, 236 F.2d 673.

[fol. 60] Subsequent to remand, the wrongful death action was settled, and Appellant paid the settlement amount. Thereafter, under the subrogation provisions of the policy, Appellant brought suit against Porter, on the theory of indemnity. Trial resulted in a judgment in favor of the Appellant. An appeal by Porter from this

judgment was dismissed by this Court on October 11, 1960 as "frivolous."

Appellant issued attachments based upon its judgment against certain assets of the Appellee. These assets consisted of investment accounts in two federal savings and loan associations and a cash checking account in the First National Bank of Washington, all standing in the name of the Appellee's Committee, Ethelbert B. Frey, Esq. The District Court granted Appellee's motion to quash the attachments, except as to the interest increments attached to the two investment accounts. Appellant then appealed, as to the action of the lower Court in quashing the attachments laid against the corpus of the two investment accounts.<sup>1</sup> On July 13, 1961, this Court (per Miller, Chief Judge, with Burger, Circuit Judge, concurring, and Prettyman, Circuit Judge, dissenting) reversed the order of the lower Court and remanded the case with directions to deny the motion to quash and to grant Appellant's motion for judgment of condemnation against the share or investment accounts. Thereafter, Appellee filed the instant Petition for Rehearing En Banc.

The history of the Appellee's accumulations is quite simple. After Porter was adjudicated insane and confined in St. Elizabeth's, his Committee periodically received disability payments from the Veterans Administration. Customarily, the Committee deposited these payments in an ordinary checking account, *i.e.*, an account earning no interest and subject to withdrawal on demand. From time to time, the Committee used some of these funds to pay bills incident to Porter's upkeep. Other sums, however, were deposited in share or investment accounts in the two savings institutions, pursuant to the provisions of District Court Rule 23, which specifically authorizes the "investment" of trust funds in "Federal [fol. 61] Savings and Loan Associations, Building and Loan Associations and Savings and Loan Associations."

Under the rules of the associations, share or account books were issued to the Committee, the accounts earned

---

<sup>1</sup> Appellant conceded, as the Court of Appeals noted, that the District Court was correct in quashing the attachment laid against the checking account in the First National Bank of Washington.



interest payable at stated intervals, and the associations were not obligated to permit withdrawals on demand, but, rather, were only obliged to honor withdrawal requests within thirty days.

The question which the instant proceeding raised is wholly clear. It was phrased in Appellant's Brief as follows:

"When the Committee of an incompetent veteran uses disability benefits payable to the veteran for the purchase of shares in savings institutions specifically approved by the Courts for the 'investment' of trust funds, are the resulting share interests 'investments', in the legal sense, and, thus, *not* exempt from attachment by a judgment creditor of the incompetent?"

As Appellant contended, the law is similarly clear. The judicial history of the exemption statute (38 U.S.C. s. 3101(a))<sup>2</sup> has made it manifest that the "exemption" from creditors' claims of benefits payable to a veteran is not absolute, and was not designed to extend to investments purchased with the benefits by or on behalf of the veteran. Accordingly, as suggested, the sole question was whether the investment accounts in the two savings institutions legally constituted "investments."

After due consideration of the appropriate decisions of the Supreme Court, the Majority of this Court concluded that:

---

<sup>2</sup> The statute, in pertinent part, reads as follows:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. \* \* \*"



[fol. 62] "We think it clear that the committee's accounts in the federal savings and loan associations were investments subject to the claims of creditors."<sup>3</sup>

Appellant respectfully submits that this conclusion was necessarily predicated upon the controlling Supreme Court decisions. In *McIntosh v. Aubrey*, 185 U.S. 122, 46 L. ed. 834, 22 S.Ct. 561, and *Trotter v. Tennessee*, 290 U.S. 354, 78 L. ed. 358, 54 S.Ct. 138, the Court laid it down that the exemption does not extend to land purchased with the benefits. Moreover, in *Carrier v. Bryant*, 306 U.S. 545, 83 L. ed. 976, 59 S.Ct. 707, the Court further held that the exemption did not extend to negotiable notes or United States bonds so purchased. And it is vital to note that, with regard to cash in bank, while the Court held that cash on deposit in an ordinary checking account, bearing no interest and subject to withdrawal on demand, is exempt, it was also at pains to point out that cash on deposit could, under certain circumstances, "assume the character of investments." *Lawrence v. Shaw*, 300 U.S. 245, 81 L.ed. 623, 57 S.Ct. 443, 108 A.L.R. 1102.

The State Courts have not been hesitant in following the obvious thrust of the Supreme Court decisions. Representative cases are cited in Appellant's Brief; with a view to brevity, only the most recent will be noticed here. This is *Hale v. Gravellese*, 166 N.E. 2d 557, s.c., 162 N.E. 2d 817, 1960. There, the Supreme Judicial Court of Massachusetts [fol. 63] unanimously held that a veteran's funds deposited by his Committee in a savings account constituted an investment and were not exempt from the claims of a creditor.<sup>4</sup>

<sup>3</sup> In *Wisconsin Bankers Association, et al. v. Robertson, et al.*, decided on the same day as the instant proceeding, this Court (per Miller, Chief Judge, with Bazelon and Burder, Circuit Judges, concurring), said that: "We recently held that a 'share' in a federal savings and loan association is an investment and is not equivalent to the deposit of money in a bank. *Aetna Casualty and Surety Co. v. Porter*, No. 16,066, decided this date."

Textual comment, and other cases in accord with the view of the Majority at bar, will be found in *American Law of Veterans*, 2nd Ed., 1954, s 43 et seq.

<sup>4</sup> The question is one of first impression in this Circuit. Although this Court has previously held that cash on deposit in

In concluding that a 'share' in a federal savings and loan association is an investment, and "is not equivalent to the deposit of money in a bank," the Majority of the Court in the instant appeal emphasized the several determinative distinctions between a depositor in a bank and a share owner in a savings institution. As the Majority pointed out, the investor in a share account is not entitled to his funds on demand, as is the bank depositor,<sup>5</sup> and the investment depositor (unlike the depositor in an ordinary checking account) does not become a creditor of the bank.

In his Petition for Rehearing, the Appellee complains that the Majority of this Court "did not rule upon the fundamental and basic issues in the case," which, he says, is as to whether or not "funds which have not changed their identity" are exempt. The vice inherent in this accusation is, of course, that it completely ignores the dispositive finding of the Majority, i.e., that the funds in question, when changed from the form of cash in bank to investment shares in savings institutions, in legal fact changed their identity and, hence, lost the benefit of the exemption.

[fol. 64] Moreover, the Appellee twice suggests that the purchase of the share accounts was "instructed by the Court" on "order of court." The record does not sustain this assertion. A study of the Appellee's Mental Health File (No. 1714-52) reveals that, upon several occasions, the Auditor recommended that "surplus" cash be transferred from the checking account to share accounts in the

---

an ordinary checking account is exempt (*Williams v. United States Fidelity & Guaranty Co.*, 71 App. D.C. 9, 107 F. 2d 210, cf. *District of Columbia v. Reilly*, 102 U.S. App. D.C. 9, 249 F. 2d 524) which is, of course, the accepted rule as to accounts of this type, this Court had never had the instant problem actually before it for decision, prior to the present proceeding.

<sup>5</sup> The Appellee insists, and the dissenting Judge noted, that as a matter of custom, investors in savings and loan associations in this area are permitted to make withdrawals on demand. Appellant submits, however, that what is ultimately controlling on this issue is not what may be done as a matter of custom or convenience, but, rather, what can be required and enforced as a matter of contractual right between the parties.

savings institutions, which the Committee did after pro forma approval of the Auditor's report by the Court. It also appears that, prior to Porter's trial on the murder charge, his counsel thought it advisable to obtain the in-court testimony of two psychiatrists who were no longer in this area, and for this purpose a substantial withdrawal from an investment account was authorized by the Court. As it turned out, the doctors were not brought into court to testify, and the funds were thereafter re-invested in the association. It is respectfully submitted that the contention that Appellee's Committee was "instructed" or "ordered" by the District Court to invest the funds in the savings institutions is not accurate and, in any event, is not germane to the issue here presented.

The dissent filed by Judge Prettyman does not, in matter of fact, differ with the Majority in their interpretation of the statute. The dissenting Judge would, rather, resolve the problem by a factual inquiry, via testimony from the Committee, as to how much of the assets on hand are actually needed for the upkeep of the veteran. Such amount would be declared to be "current deposits," i.e., immune from seizure, while the residue would be denominated "investments" and available to a creditor. With utmost respect to Judge Prettyman, there would seem to be a fundamental difficulty inherent in this approach, it being apparent that there is no statutory authorization for such a procedure. The entire subject of veterans' benefits is, generically, one of legislative creation, and Appellant respectfully submits that any implementation or amplification of the Congressional mandate must be achieved by the legislature itself or, at the very least, through its delegate, the Administrator of Veterans Affairs, under proper authorization.

It is respectfully submitted that the Majority of this Court correctly interpreted the exemption statute and the [fol. 65] controlling decisions of the Supreme Court construing it, and that the Petition for Rehearing En Banc should be denied.

Respectfully submitted,

JOHN L. LASKEY  
 RICHARD WHITTINGTON WHITLOCK  
 509 Albee Building  
 Washington 5, D. C.  
 Attorneys for Appellant

CERTIFICATE OF SERVICE  
 (omitted in printing)

[fol. 66] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR  
 THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Before: Wilbur K. Miller, Chief Judge, Edgerton, Prettyman, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING EN BANC—  
 August 21, 1961

Upon consideration of appellee's petition for a rehearing en banc, it is

ORDERED by the court that the petition for rehearing en banc is denied.

Per Curiam.

[fols. 67-68] • • • •

[fol. 69] Clerk's Certificate to foregoing  
 transcript omitted in printing

[fol. 70]

**SUPREME COURT OF THE UNITED STATES**

**No. 549 Misc., October Term, 1961**

**HARRY CLIFFORD PORTER, PETITIONER**

**VS.**

**AETNA CASUALTY AND SURETY COMPANY**

**ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the District of Columbia Circuit.**

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—December 11, 1961**

**ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 604 and placed on the summary calendar.**

**And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.**

**SUPREME COURT. U. S.**

**No. 604**

**FILED**

**FEB 23 1962**

**JOHN F. DAVIS, CLERK**

**In the Supreme Court of the United States**

**OCTOBER TERM, 1961**

---

**HARRY CLIFFORD PORTER, PETITIONER**

**v.**

**AETNA CASUALTY & SURETY COMPANY**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT**

---

**BRIEF FOR THE UNITED STATES  
AS AMICUS CURIAE**

---

**ARCHIBALD COX,**  
*Solicitor General,*

**WILLIAM H. ORRICK, JR.,**  
*Assistant Attorney General,*

**JOHN G. LAUGHLIN, JR.,**  
**HERBERT E. MORRIS,**  
*Attorneys,*  
*Department of Justice,*  
*Washington 25, D. C.*

---